IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

Crl.MC.No. 910 of 2007()

AGAINST THE JUDGEMENT/ORDER IN CRRP.947/2005 Dated 29/07/2005

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PETITIONER: PETITIONER/ACCUSED

ARAVINDAKSHAN PILLAI,S/O.GOPINATHAN NAIR,MANIMANDIRAM,EAST FORT,MAVELIKKARA.

BY ADV. SRI.K.R.VINOD

RESPONDENTS: RESPONDENT/COMPLAINANT

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1. MOHANA CHANDRAN NAIR,'SUGANTHI', WEST FORT,MAVELIKKARA FROM 'AISWARYA', WEST FORT,MAVELIKKARA.

2. STATE OF KERALA REP.BY THE PUBLIC PROSECUTOR,HIGH COURT OF KERALA.

R1 BY ADV. SRI.K.SASIKUMAR
R2 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 910 of 2007

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Dated this the 26th day of March, 2007

O R D E R

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the N.I. Act. The verdict of guilty, conviction and sentence have become final with the order passed by this Court in revision. The petitioner faces the sentence of imprisonment till rising of court and to pay an amount of Rs.1,85,000/- as compensation. The petitioner was directed to appear before the learned Magistrate on or before 29.9.2005 to undergo the sentence. He has not appeared before the learned Magistrate so far. The petitioner apprehends that the sentence may be executed against him.

2. The learned counsel for the petitioner submits that the petitioner has deposited an amount of Rs.25,000/- before the court below and has paid the balance amount of Rs.1,60,000/- to the complainant directly. A receipt, copy of which is produced as Annex.A2, has also been obtained, it is submitted. In these circumstances it is prayed that the post revision composition may be

accepted as held in **Sabu George** v. **Home Secretary** (2007 (1) KLT 982).

3. Powers under Section 482 Cr.P.C. are to be invoked only in an exceptional case, in the interests of justice. I do not in the facts and circumstances of this case find any necessity to invoke such power. The petitioner has to undergo imprisonment till rising of court only, i.e. the substantive sentence imposed. If the petitioner has already deposited an amount of Rs.25,000/- and has already paid an amount of Rs.1,60,000/- to the complainant, there can be no question of the default sentence being executed against him. Last trace of doubt on that aspect is removed by the decision in **Girish** v. **Muthoot Capital Services (P) Ltd.** (2007 (1) KLT 16). In these circumstances I find no necessity to invoke the powers under Section 482 Cr.P.C. The petitioner must appear before the learned Magistrate and undergo the substantive sentence of imprisonment till rising of court. He must appear along with the complainant and satisfy the learned Magistrate that the entire balance amount of Rs.1,60,000/- has been paid directly to the complainant and that the amount of Rs.25,000/- has already been deposited in court. If the said amount has not been released to the complainant, the learned Magistrate shall forthwith release the said amount

to the complainant. If the entire amount of Rs.1,85,000/- has been paid and/or deposited, there can be no question of the default sentence being executed against the petitioner.

4. This Crl.M.C. is accordingly dismissed with the above observations.

(R. BASANT)
Judge

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